

MF 98-1

Tax Type: MOTOR FUEL TAX

Issue: Motor Fuel Distributor - 5 Day Revocation

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	Docket #
OF THE STATE OF ILLINOIS)	
)	License #
v.)	Permit #
)	
XYZ CORPORATION)	Barbara S. Rowe
Taxpayer)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Synopsis:

This cause came to be heard as a set matter, pursuant to notice, for the purpose of revoking the distributor and receiver licenses as well as the blender permit of XYZ CORPORATION (hereinafter referred to as the "Taxpayer") under authority granted by 35 ILCS 505/16. The grounds for the revocation, as stated on the Notice of Revocation, entered of record as Department's Exhibit 2, is that the taxpayer had no blending activity. Following a hearing and consideration of evidence in this case, it is my recommendation that the issue be decided in favor of the Department.

Findings of Fact:

1. The prima facie case of the Illinois Department of Revenue (hereinafter the "Department") was established by the admission into evidence of Department's Group Exhibit

Nos. 2 & 5, consisting of the Notice of License Revocation, copies of the taxpayer's motor fuel returns, and the Notice of Hearing. (Tr. p. 8)

2. The taxpayer was issued distributor license D-6434, blender permit BD-847, and receiver license R-16434 by the Department after applications were made by the taxpayer for the respective licenses and permit. (Dept. Ex. No. 2)

3. The Department issued the notice of license revocation on January 24, 1997, based upon the fact that the taxpayer had no blending activity. (Dept. Ex. No. 2)

4. The taxpayer does not blend on a consistent basis. The price of ethanol determines their blending activity. (Tr. p. 10)

5. There was a span of about a year, when ethanol prices were high, when the taxpayer conducted no blending activity. (Tr. pp. 10 & 12)

6. The amount of the taxpayer's sales show an increase from the period of August 1994 to July 1997. (Taxpayer's Ex. Nos. 1 & 2)

7. Because the taxpayer has two retail locations that operate in the state of Illinois, one in FIRST CITY, and the other in SECOND CITY, it is important for them to retain the licenses. (Tr. p. 11)

Conclusions of Law:

The case proceeds under the operative statute, 35 **ILCS** 505/16, which states in relevant part:

The Department may, after 5 days' notice, revoke the distributor's, receiver's, supplier's or bulk user's license or permit of any person (1) who does not operate as a distributor, receiver, supplier or bulk user (a) under Sections 1.2, 1.14, 1.15, or 1.20 . . . or (2) who violates any provision of this Act . . .

Any person whose returns for 2 or more consecutive months do not show sufficient taxable sales to indicate an active business as a distributor, receiver, or supplier shall be deemed to not be operating as a distributor, receiver, or supplier as defined in Sections 1.2, 1.14 or 1.20. . . .

The Department may, on notice given by registered mail, cancel a Blender's Permit for any violation of any provisions of this Act . . .

The Motor Fuel Tax Law states that a distributor "means a person who either produces, refines, blends, compounds or manufactures motor fuel in this State, . . ." 35 **ILCS** 505/1.2. The Act defines blending as "the mixing together by any process whatsoever, of any one or more products with other products, and regardless of the original character of the products so blended, provided the resultant product so obtained is suitable or practicable for use as a motor fuel, . . ." 35 **ILCS** 505/1.5. The Act also defines a receiver to mean "a person who either produces, refines, blends, compounds or manufactures fuel in this State . . ." 35 **ILCS** 1.20.

The taxpayer admitted that there was a period of about a year in which no blending activity occurred. The law is clear that the Department can revoke the distributor's and receiver's licenses and/or the blender permit when the taxpayer's returns reflect that the taxpayer has not acted as a receiver, distributor, or blender for two or more consecutive months. It is therefore recommended that licenses D-06434 and R-16434 be revoked. It is also recommended that permit BD-847 be cancelled.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

February 3, 1998